

Hearing Testimony
Submitted by
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Before the
House Government Reform Subcommittee on the Federal
Workforce and Agency Organization

Establishing a Commission to Recommend Improvements
for the Federal Employees Appeals Process

The Honorable Jon Porter, Chairman
The Honorable Danny K. Davis, Ranking Member

July 11, 2006
Room 2247 Rayburn House Office Building

Good morning Chairman Porter, Ranking Member Davis, and Members of the Subcommittee.

My name is Neil McPhie and I have the honor of serving as Chairman of the U.S. Merit Systems Protection Board. Thank you for the opportunity to appear before you to testify about the proposal to establish a commission to study the federal employee appeals system. I commend the members of this subcommittee for their vigilance in exploring ways to improve the procedures for processing challenges to personnel actions in the Federal government. As you know, the SEA, or Senior Executives Association, recently proposed the consolidation of the existing complaint, appeals, and grievance processes into a single system to be administered by a Federal Employees Appeals Court. During last year's hearing on that proposal conducted by this subcommittee, I suggested that SEA's proposal and other recommendations warranted further study. I am pleased to have the opportunity to examine the specific mechanism for conducting such a study with this Subcommittee and with my fellow panel members.

The current focus that Congress and the Administration have placed on reform of the federal personnel system presents a timely opportunity to study the procedures used to resolve disputes arising in the federal workplace. In recent years Congress has granted both the Department of Homeland Security and the Department of Defense the authority to establish new human resources systems. The Administration has drafted a bill known as the Working for America Act that would change pay, performance management, and collective bargaining rules for the rest of the government. More recently, Senator Voinovich has introduced legislation that would link annual performance appraisals with pay increases. Senator Akaka has introduced legislation to establish certain training programs for federal supervisors. The Senate has amended the

2007 National Defense Authorization bill by adding language intended to enhance protections for federal employees who reveal waste, fraud, and abuse. I am not here to speak for or against any of these initiatives; as I have said before this subcommittee in the past, the Merit Systems Protection Board is ready to play the role that policymakers designate for it in whatever systems emerge. It is clear, however, that Congress and the Administration are keenly interested in a comprehensive review of federal personnel systems.

There is a perception that the multiplicity of laws and regulations that govern the federal employment relationship make the current dispute-resolution processes too complex, confusing, and time-consuming. As I discussed at the earlier hearing, a single personnel action can give rise to many different legal claims that may be asserted before several different bodies. A study that examines, among other things, the nature and extent of any overlap in the responsibilities or authorities of the multiple agencies that consider such claims is a crucial first step in identifying ways to improve the effectiveness of the federal employee redress system as a whole. In this regard, the Equal Employment Opportunity Commission recently issued a detailed report on the processing of federal-sector discrimination complaints suggesting that system improvements in that area may warrant consideration. [*See Annual Report on the Federal Work Force Fiscal Year 2005* (EEOC June 28, 2006).]

Any study of complaint, appeals, and grievance processes would include a review of the operations of the Merit Systems Protection Board. In that vein, I would like to give a brief report on how the Board is performing. During fiscal year 2005, the Board's administrative judges issued approximately 6,800 initial decisions, with an average case processing time of 92 days. Average processing time for administrative

judges in the first 8 months of fiscal year 2006 was 88 days. At the headquarters level, the Board members issued approximately 1,600 decisions in fiscal year 2005, most of which were on petitions for review of decisions issued by the administrative judges. The Board reduced its inventory of pending cases by 48% in fiscal year 2005, and by an additional 16% in the first 8 months of fiscal year 2006. The average case processing time for headquarters decisions was 265 days in fiscal year 2005, and that figure has been reduced substantially in the first 8 months of fiscal year 2006 (to 154 days).

The improving picture at the Merit Systems Protection Board has been accomplished with no loss of quality, despite the growing complexity of the law and the changing makeup of the Board. The Court of Appeals for the Federal Circuit left unchanged 94% of the Board decisions that were appealed to the Court.

In addition to accomplishments in the adjudication of cases, the Board has continued to enhance its use of alternative dispute resolution techniques. The Board has expanded its voluntary Mediation Appeals Program (MAP) to include all regional and field offices and completed mediation training for new mediators. Approximately 48% of the cases processed through MAP in fiscal year 2005 settled, and the figure for the first half of fiscal year 2006 is comparable.

The Merit Systems Protection Board has also implemented a number of electronic initiatives that have borne fruit in terms of reducing case processing times. Two such initiatives include e-Appeal (whereby individuals may file appeals online) and the provision of online access to case files to all Board members.

All of the members of the Merit Systems Protection Board are committed to seeing the Board carry out its designated role fairly and efficiently in whatever dispute-resolution systems policymakers devise. The proposed Commission to study improvements to current complaint, appeals, and grievance processes is certainly timely. The proposed membership of the Commission, to include representatives from all stakeholder groups, appears well-suited to accomplish the objectives outlined in the bill. I am truly grateful to this subcommittee for recognizing the importance of the study, and for choosing the Chairman of the Merit Systems Protection Board to Chair the Commission. I look forward to this unique opportunity and challenge. Thank you. I would be happy to answer any questions the members of the subcommittee might have.